

**PROGRAM MANAGER SERVICES AGREEMENT FOR:
THE LOS GATOS UNION SCHOOL DISTRICT'S
CONSTRUCTION PROGRAM**

PROJECT: PROGRAM MANAGEMENT - CONTRACT _____

THIS AGREEMENT is made effective as of the **1st day of April 2010** (the "Effective Date"), by and between Kramer Project Development Company, Inc., a California Corporation (hereinafter "KRAMER") and the **Los Gatos Union School District** (hereinafter "DISTRICT").

RECITALS

WHEREAS, DISTRICT desires to retain the services of KRAMER for the benefit of the DISTRICT and to assist in the operation of the construction program management of DISTRICT. In consideration of the mutual promises and covenants made herein, DISTRICT and KRAMER agree as follows:

**ARTICLE 1.
TERM OF AGREEMENT**

Section 1.01 This agreement will become effective on **April 1, 2010** and, except as otherwise provided herein, will continue in effect **until June 30, 2011**.

**ARTICLE 2.
SERVICES TO BE PERFORMED BY KRAMER**

Section 2.01 KRAMER is hereby retained to perform program management services set forth in Exhibit A attached hereto and incorporated herein by reference as a consultant for DISTRICT. In that capacity, KRAMER shall provide advice and counsel to the DISTRICT and perform the required duties on those or other matters as agreed to by KRAMER and DISTRICT.

Section 2.02 KRAMER will determine the method, details, and means of performing the above-described services, subject only to applicable laws and the rules and regulations of the DISTRICT. KRAMER shall be free to utilize its own employees, consultants and associates as are necessary to accomplish the services to be performed herein.

Section 2.03 During the term of this Agreement, KRAMER shall be free to engage in any other business or professional activities provided that none of it is done at the place of business of the DISTRICT and provided further that such activity does not interfere with the business of the DISTRICT.

Section 2.04 Specific requirements of Program and Project Budget Development as identified in Exhibit A.

2.04.1 KRAMER shall have responsibility to develop, review, and reconcile each Project Budget with the separate construction cost estimates as part of the budget in conjunction with the Architect and DISTRICT staff throughout the design process and construction. KRAMER shall have responsibility to develop, review, and reconcile the Program Budget in conjunction with DISTRICT staff and assist DISTRICT staff in presenting the Program and Project Budgets to obtain any necessary Board approvals.

2.04.2 KRAMER shall work cooperatively with DISTRICT staff and the Project Design Professional(s) during the Schematic Design Phase, Design Development Phase, and Construction Documents Phase of each project, so that construction cost of the work designed by the Project Design Professionals will not exceed the construction cost estimates and/or cause the Program or Project Budgets to be exceeded. KRAMER shall advise the DISTRICT with options to make adjustments to the Project and Program Budgets as necessary if KRAMER believes the construction cost of the work designed by the Project Design Professionals will cause the construction work to exceed the allowances provided in the Project Budget(s).

2.04.3 Evaluations of the DISTRICT's Program Budget and Architect's Construction Cost Estimates will represent KRAMER's best judgment as a professional familiar with the construction industry in the geographic area of the DISTRICT. KRAMER shall assist the Design Professionals and DISTRICT in identifying all pre-design and pre-construction investigations and analyses necessary to prevent cost overruns, differing site conditions claims, other construction claims, design omissions, and budget overruns.

2.04.4 KRAMER specifically acknowledges that the DISTRICT is relying on KRAMER to assist the DISTRICT to monitor, review, verify and revise each Project Budget at multiple instances throughout the Program whenever requested by the DISTRICT.

ARTICLE 3. COMPENSATION

Section 3.01 KRAMER shall receive compensation for services rendered under this Agreement in accordance with the rates of services set forth in Exhibit B.

Section 3.02 Unless indicated otherwise by Exhibit B, KRAMER shall submit monthly invoices, itemized by person, billing rate, hours worked and any reimbursable expenses incurred in sufficient detail as request by the DISTRICT.

Section 3.03 The DISTRICT will pay undisputed invoices within thirty (30) days of receipt.

**ARTICLE 4.
OBLIGATIONS OF KRAMER and DISTRICT**

Section 4.01 Services performed by KRAMER under this Agreement shall be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the same profession currently practicing in the same locality under similar conditions.

Section 4.02 DISTRICT agrees to comply with all reasonable requests of KRAMER necessary to the performance of KRAMER 's duties under this Agreement.

Section 4.03 DISTRICT shall provide office space on its premises for use by KRAMER while KRAMER performs services that must be conducted on DISTRICT premises. DISTRICT will pay for general office expenses including an office telephone, facsimile transmission equipment, photocopying and printing. At the DISTRICT'S request, KRAMER may provide any of these items subject to reimbursement by the DISTRICT.

Section 4.04 **KRAMER agrees that Rick Kramer shall maintain his role as Program Manager for the duration of this Agreement. KRAMER shall not diminish his capacity in this role without prior written approval by DISTRICT.**

**ARTICLE 5.
LIMITED LIABILITY**

Section 5.01 KRAMER will not be liable to DISTRICT or to anyone who may claim any right due to a relationship with DISTRICT, for any acts or omissions in the performance of services under the terms of this Agreement or on the part of the employees or agents of DISTRICT unless such acts or omissions are due to the negligence or willful misconduct of KRAMER. DISTRICT will indemnify and hold KRAMER free and harmless from any obligations, arising from, growing out of, or in any way connected with the services rendered to DISTRICT under this Agreement unless caused by KRAMER 's negligence or willful misconduct.

Section 5.02 KRAMER agrees to defend, indemnify, and hold harmless the DISTRICT, its Board, officers, agents and employees from all losses, costs, and expenses arising out of any liability or claims of liability for personal injury, bodily injury to persons, contractual liability and damage to property sustained or claimed to have been sustained arising out of activities of KRAMER, its subcontractors, or those of any of its officers, agents, or employees, whether such act is authorized by this agreement or not; and KRAMER shall pay for any and all damage to this property of the DISTRICT, or loss or theft of such property, done or caused by such persons. KRAMER further agrees to reimburse DISTRICT for any expenditures, including reasonable attorney's fees, DISTRICT may incur by reason of the matters that are the subject of the

indemnification provisions stated herein, and if requested by DISTRICT, KRAMER will defend any claims or litigation to which this indemnification provision applies at the sole cost and expense of KRAMER.

ARTICLE 6 INSURANCE

Section 6.01 KRAMER shall maintain general liability insurance (occurrence form or its equivalent) naming DISTRICT as additional insured covering all operations by or on behalf of KRAMER providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for 1) premises and operations; 2) contractual liability insuring the obligations assumed by KRAMER in this Agreement; 3) broad form property damage; 4) personal injury liability.

Limits of liability shall not be less than:

\$1,000,000 each occurrence (combined single limit for bodily injury and property damage)

\$1,000,000 for personal injury liability

\$2,000,000 general aggregate

Section 6.02 KRAMER shall maintain workers' compensation insurance and employer's liability insurance as required by law.

Section 6.03 KRAMER shall provide proof of automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

Section 6.04 KRAMER shall carry professional liability insurance with limits of liability no less than \$1,000,000.

Section 6.05 KRAMER shall provide the DISTRICT with copies of certificates for all policies obtained, as well as copies of policies and endorsements.

Section 6.06 KRAMER shall also provide the DISTRICT with thirty (30) days notice prior to cancellation, non-renewal or endorsement reducing or restricting coverage, or reduction of coverage amounts of any of the insurance.

**ARTICLE 7
LICENSURE AND STANDARDS**

Section 7.01 KRAMER shall, at all times during the term of this Agreement, maintain any and all professional licenses necessary to perform under the terms of this Agreement.

**ARTICLE 8.
TERMINATION OF AGREEMENT**

Section 8.01 In the event a party to this Agreement fails to comply with any of its material obligations hereunder, through no fault of the other party, the non-defaulting party may terminate this Agreement on thirty (30) days written notice to the party in default, provided that such right of termination may not be exercised if the default is cured within thirty (30) days of receipt of the written notice by the defaulting party.

Section 8.02 The DISTRICT reserves the right to terminate this Agreement for its convenience upon thirty (30) days written notice to KRAMER. In such event, KRAMER shall be paid for all services performed through the date of termination and for all reimbursable expenses incurred through the date of termination.

Section 8.03 KRAMER reserves the right to terminate this Agreement for its convenience upon sixty (60) days written notice to the DISTRICT. In such event, KRAMER shall dedicate 40 hours unpaid during the termination period to assist the DISTRICT in transition of the program management services to a new provider.

Section 8.04 Termination shall have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination.

**ARTICLE 9
STATUS AS INDEPENDENT CONTRACTOR**

Section 9.01 DISTRICT shall not provide any worker's compensation insurance benefits or unemployment insurance, nor withhold federal or state income taxes on behalf of KRAMER, its consultants or its employees. DISTRICT and KRAMER acknowledge and agree that neither KRAMER, its consultants or its employees will be considered as employees of DISTRICT but are instead working for DISTRICT in their status as consultants or employees of KRAMER, which is retained solely as an independent contractor. KRAMER is responsible for payment of any state and federal taxes and any other state and federal requirements not otherwise specifically provided for in this Agreement. KRAMER agrees to indemnify DISTRICT for any and all claims relating to such taxes and other requirements.

**ARTICLE 10.
ASSIGNMENT**

Section 10.01 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by either party to this Agreement without the prior written consent of the other party.

**ARTICLE 11.
FINGERPRINTING**

Section 11.01 Pursuant to Education Code section 45125.2, DISTRICT has determined on the basis of scope of work in the Agreement of this Project, that KRAMER and its subcontractors and employees will have only limited contact with pupils at most. KRAMER shall promptly notify DISTRICT in writing of any facts or circumstances which might reasonably lead DISTRICT to determine that contact will be more than limited as defined by Education Code section 45125.1(d).

**ARTICLE 12.
COVENANT AGAINST CONTINGENT FEES**

Section 12.01 KRAMER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for KRAMER, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for KRAMER, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the DISTRICT shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage fee, gift, or contingency.

**ARTICLE 13.
COST DISCLOSURE – DOCUMENTS AND WRITTEN REPORTS**

Section 13.01 KRAMER shall be responsible for compliance with California Government Code section 7550, if the total cost to produce any document or written report associated with this Agreement is over five thousand dollars (\$5,000).

**ARTICLE 14.
DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION**

Section 14.01 Pursuant to section 17076.11 of the Education Code, the DISTRICT has a participation goal for disabled veteran business enterprises (DVBE's) of at least three (3) percent, per year, of funds expended each year by the DISTRICT on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the Act). Should a project covered by this Agreement use funds allocated under the Act, to the extent feasible and as required by law, KRAMER shall provide to the DISTRICT certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBE's in conjunction with the Agreement, and documentation demonstrating KRAMER's good faith efforts to meet these goals.

**ARTICLE 15.
NONDISCRIMINATION**

Section 15.01 KRAMER agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, national origin, ancestry, religion, age, physical disability, sex or sexual orientation of such person. KRAMER shall comply with any and all regulations and laws governing nondiscrimination in employment.

**ARTICLE 16.
WARRANTY**

Section 16.01 KRAMER warrants that he is properly licensed and/or certified under the laws and regulations of the State of California to provide all the services that it has herein agreed to perform.

Section 16.02 KRAMER certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the work of this agreement.

Section 16.03 KRAMER agrees to fully comply with and to require its sub-consultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code.

**ARTICLE 17.
GENERAL PROVISIONS**

Section 17.01 Any and all notices or other communications required or permitted to be given under any provisions of this Agreement shall be in writing and shall be deemed to have been duly given (i) if personally delivered, when delivered, (ii) if mailed by first class registered mail, return receipt requested, addressed to the parties at the addresses set forth below, five (5) days after mailing:

If to the DISTRICT: Los Gatos Union School District
Richard Whitmore and Kathy Ordner
Superintendent
17010 Roberts Road
Los Gatos, CA 95032

If to KRAMER : Kramer Project Development Company, Inc.
Richard A. Kramer
President
1791 Nelson Way
San Jose, CA 95124

Any party may by notice to the other party, given as aforementioned, change its address for notification purposes.

Section 17.02 This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by KRAMER for DISTRICT and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged.

Section 17.03 If any provision in this agreement is held by court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 17.04 If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in separate action brought for that purpose, in addition to any other relief to which party may be entitled.

Section 17.05 This Agreement will be governed by and construed in accordance with the

laws of the State of California.

Section 17.06 All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all parties.

Section 17.07 Failure of any party hereto at any time to require performance by any other party of any provision of this Agreement shall not affect the right of such party to require performance of that provision, and any waiver by any party of any breach of any provision of this Agreement shall not be construed as waiver of any continuing or succeeding breach of such provision, waiver of the provision itself, or waiver of any right under this Agreement.

Section 17.08 This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to an original and all of which counterparts of this Agreement, taken together, shall constitute but one and the same instrument.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have caused this Agreement for Services to be duly executed as of the day and year written below.

"DISTRICT"

Los Gatos Union School District
17010 Roberts Road
Los Gatos, CA 95032

Date: _____

By: RICHARD WHITMORE

Title: SUPERINTENDENT

Sign: _____

"KRAMER "

Kramer Project Development Company, Inc.,
a California Corporation
1791 Nelson Way
San Jose, CA 95124

Date: _____

By: RICHARD A. KRAMER

Title: PRESIDENT

Sign: _____

EXHIBIT A – SERVICES TO BE PERFORMED

Purpose and Intent

Kramer Project Development Company, Inc. (hereinafter KRAMER), as a qualified Program Manager, shall provide the services set forth herein (the “Program Management Services”) to assist DISTRICT staff in the management and implementation of the District’s Construction Program. The projects within the Construction Program will be coordinated in an expeditious and efficient manner, in order that they may be completed within budgetary limits and ready for use at the earliest possible dates. The scope of these services includes those activities indicated in the “Program Manager” Column of the “Consultant Roles and Responsibilities” table below.

The Program Manager is: Rick Kramer. KRAMER agrees that Rick Kramer will be available to provide the services of the Program Manager for a minimum of 34 hours per month to perform the services designated. Additional required services beyond the minimum dedicated number of hours may be provided by the Program Manager himself or designated employees or associates at the rates set forth in this Agreement. Notwithstanding anything above, KRAMER shall only invoice for hours of labor and reimbursable services and expenses actually provided to the DISTRICT.

Basic Services

KRAMER covenants with the DISTRICT to further the interests of the DISTRICT by providing the services hereunder in cooperation with and reliance upon, the design and engineering services of the appropriate DISTRICT’s design consultants. KRAMER also agrees to furnish business administration and management services in an expeditious and economical manner, consistent with the interests of the DISTRICT.

Agency

KRAMER will be designated as the agent of the DISTRICT to perform the Program Management Services described in this Agreement. In this capacity, KRAMER shall report to the DISTRICT’s Facility Modernization Project Coordinator.

CONSULTANT ROLES AND RESPONSIBILITIES

PROGRAM MANAGEMENT ACTIVITIES	District Staff	Architect	Program Mgr / Project Mgr / CM	Project Inspector
Public Relations with Board, Public, Site, COC	Responsible	Assist	Assist	Assist
Expedite program, cost and schedule decisions	Responsible	Assist	Responsible	
Develop Needs Assessment, Master Plans	Responsible	Responsible	Assist	
Develop Design and Materials Standards	Assist	Responsible	Assist	

PROGRAM MANAGEMENT - CONTRACT _____

Develop, Negotiate, Manage District Consultant Contracts	Responsible	Assist	Responsible	
Prepare Program Status Reports	Responsible	Assist	Assist	
Implement Program Management and Budget Controls	Responsible		Responsible	
Develop Implementation Plan for all projects	Assist	Assist	Responsible	
Develop and Manage Program and Project Schedules	Assist	Assist	Responsible	
Develop and Manage Program Budget and Cash Flows in accordance with the Architects Construction Cost Estimates	Responsible	Assist	Responsible	
Manage CEQA Compliance	Responsible	Assist	Assist	
Manage State Funding Coordination	Responsible	Assist	Assist	
Manage Labor Compliance Program	Responsible		Assist	
Review/Approve Vendor and Contractor Invoices	Responsible	Assist	Assist	Assist
Implement DOJ Compliance Program	Responsible		Assist	
District Safety Program	Responsible		Assist	
Manage Pre-qualification of Contractors	Responsible		Assist	

EXHIBIT B – COMPENSATION

Basis of Compensation

Compensation for this agreement shall be billed on a Time and Materials Basis as set forth herein. Payment for KRAMER’S services shall be at the billable rates indicated below.

KRAMER and the DISTRICT shall work collaboratively to keep the cost of these services to within a Not to Exceed amount of \$80,000 for the term of this agreement. All billings submitted by KRAMER are subject to monthly review with the District’s **Facilities Modernization Project Coordinator** and payment pursuant to the provisions of Article 3 of the Agreement.

KRAMER’s billable rates include payments for KRAMER’S labor costs and home office expenses, including salaries, personnel benefits, bonuses, vacation, sick leave, personal leave, cell phones, personal computer equipment, general liability, professional liability and workers compensation insurance. Kramer may identify expenses not included in KRAMER’S billable rates that are directly allocable to this Agreement. Upon DISTRICT written approval, these items may either be provided directly by the DISTRICT or will be provided by KRAMER and invoiced to the DISTRICT as reimbursable services or expenses. Any charges for these reimbursable services and expenses shall be paid by the DISTRICT only upon certification that they were authorized in writing in advance by the DISTRICT and the services have been satisfactorily completed.

**Kramer Project Development Company, Inc.
2010 BILLING RATE SCHEDULE**

<i>Classification</i>	<u>Rate</u>
Program Manager / Principal	\$ 153.00
Sr. Estimator/Sr. Project Manager	121.00
Estimator/Project Manager	109.00
Assistant Program Manager	96.00
Move Manager	96.00
Contracts Manager	92.00
Project Engineer	79.00
Project Accountant	65.00
Project Assistant	51.00
Clerical	44.00
Project Superintendent / Construction Manager	109.00
Asst. Project Superintendent	86.00
Foreman	79.00
Outside Consultants / Professionals	Invoice + 15%

Kramer Project Development Company, Inc. and the DISTRICT shall review these rates for adjustment on January 1st of each year while this agreement is in effect. The DISTRICT and KRAMER shall mutually agree prior to any reasonable rate adjustments. Upon request, KRAMER shall provide supporting statistical documentation such as regional cost of construction labor indexes and insurance costs.